

REPUBLIC OF KENYA
IN THE MATTER OF THE MEDIA COUNCIL OF KENYA ACT [2013]
AND
IN THE MATTER OF THE MEDIA COMPLAINTS COMMISSION
MEDIA COMPLAINTS COMMISSION CASE NO.10 OF 2024

JOSIAH OMOLO ODANGACOMPLAINANT

VERSUS

MEDIA COUNCIL OF KENYA1ST RESPONDENT

DAVID OMWOYO OMWOYO.....2ND RESPONDENT

RULING ON ADMISSIBILITY

A. THE PARTIES

1. The Complainant in this matter is Josiah Omolo Odanga, a journalist with experience in the media and communication industry, representing himself in this matter.
2. The 1st Respondent is the Media Council of Kenya (MCK), an independent national institution established under the Media Council Act, No. 46 of 2013, responsible for setting media standards and ensuring compliance.
3. The 2nd Respondent is the Chief Executive Officer (CEO) of the 1st Respondent and serves as the Secretary to the Board of the 1st Respondent.

B. PARTICULARS OF THE COMPLAINT

4. The Complainant alleges that he was unfairly treated by the Respondents following an altercation with colleagues, leading to an investigation that resulted in his indefinite suspension by his employer, Radio Africa Group (The Star), without pay.
5. The complaint arises from an incident that occurred on January 20, 2024, where the Complainant was physically attacked by two colleagues while covering a bursary distribution event at Karariw Primary School in Gem Constituency. The Complainant asserts that the Respondents acted without jurisdiction, conducted an unfair investigation, and issued press statements that were defamatory, leading to reputational and financial damage.

6. The Complainant filed a complaint with the Media Complaints Commission (MCC) on April 28, 2024, but alleges that his concerns were not adequately addressed. During this time, the MCC, the only body legally mandated to arbitrate disputes such as his, lacked commissioners. The new commissioners took an oath of office on July 31, 2024. Consequently, the Complainant sought legal redress in the Siaya Magistrates Court, where he obtained a judgment against the MCK on September 4, 2024.
7. The dispute before the Media Complaints Commission (MCC) is based on the Complainant's amended complaint dated 1st November 2024, which seeks a review of the Respondents' actions and the impact on his professional life. The Complainant prays that this Honorable tribunal finds that the 1st and 2nd Respondents acted illegally, irregularly, unfairly, and inhumanely against the principles of natural justice, and grants the following reliefs:
 - a. A declaration that the 1st and 2nd Defendants lacked jurisdiction to take disciplinary action against the Complainant at the time of the incident.
 - b. A declaration that the 1st and 2nd Defendants' Press Statements of 23rd and 25th January 2024 fell short of the required standards of Accuracy and Fairness as outlined in the Code of Conduct for the Practice of Journalism in Kenya.
 - c. An order directing the 1st and 2nd Defendants to retract and withdraw the press statements and issue an unqualified apology in terms acceptable to the Complainant.
 - d. An order directing the 1st and 2nd Defendants to return and/or validate the Complainant's journalism license without further delay.
 - e. An order directing the 1st and 2nd Defendants to instruct The Star to reinstate the Complainant's journalistic services without delay.
 - f. An order directing the 1st and 2nd Defendants to publicly explain the circumstances under which the Complainant's assailants continued their duties after their journalism licenses were impounded.
 - g. An order directing the 1st and 2nd Defendants to publicly explain the circumstances under which the Complainant's renewed Press Card was printed and sent, despite its public invalidation.
 - h. Any other reliefs that this Honourable Tribunal deems equitable.

C. RESPONDENTS' RESPONSE

8. In their amended response dated 30th January 2025, the Respondents deny any wrongdoing and assert that their actions were consistent with their mandate under

- the Media Council Act. They claim their investigations were fair and impartial, allowing the Complainant to present his case.
9. The Respondents in further response, aver that under Section 6 of the Media Council Act, the 1st Respondent's functions are inter alia; to develop and regulate ethical and disciplinary standards for journalists, media practitioners and media enterprises; to facilitate resolution of disputes between the government and the media, between the public and the media, and intra media, and to perform such other functions as may be assigned to it under any other written law.
 10. They maintain that the absence of the Media Complaints Commission (MCC) did not hinder their ability to address and sanction the Complainant's actions. They assert that as long as their actions complied with Section 6(2) of the Act, they were within their rights to resolve disputes within the media fraternity, especially where unethical conduct was evident.
 11. The 2nd Respondent further avers in response to the various complaints raised, that as a public officer, his actions done in the course of his official duties cannot be sanctioned as against his individual person as is the case in this complaint but rather as an office established under the act under the Fair Administrative Actions Act through Judicial Review proceedings. **Section 22** of the Media Council Act provides that "*An action shall not lie against the Council or any of its officers or other persons appointed or authorized to perform any function under this Act on behalf of or in respect of anything done or omitted to be done by them in good faith in the exercise of or performance of any power, authority or duty conferred or imposed by them under this Act*"
 12. The 1st and 2nd Respondents pray that the Complaint herein be dismissed in its entirety with costs for being unmerited, frivolous, and vexatious.

D. THE COMMISSION'S DETERMINATION

13. The Commission relies on Sections 35(3) of the Act which stipulates that

After considering each party's submissions the commission shall then conduct a preliminary assessment to determine the admissibility or otherwise of the complaints lodged within fourteen days.

14. The Commission makes the assessment based on:
 - a) Whether the complaint meets the statutory requirements under Section 34 (1)(a) or (b) of the Act.
 - b) Whether a similar matter is already pending before another court of law
15. The Commission derives its authority under **Section 34 (1)(b) of the Media Council Act, 2013**, which provides that:

"A person aggrieved by ... anything done against a journalist or media enterprise that limits or interferes with the constitutional freedom of expression of such journalist or media enterprise" may file a complaint with the Commission.

16. The Complaint by the Complainant, an accredited journalist, alleges that he was subjected to unfair treatment, harassment, and professional obstruction in a manner that falls within the purview of Section 34 (1) (b) of the Act, which provides for redress where a journalist's freedom of expression is interfered with. These allegations raise concerns about journalistic freedom and professional independence, thereby warranting an in-depth investigation by the Commission.

17. The distinct and independent adjudicative function of the Media Complaints Commission (MCC) as expressly provided under **Section 32 (c) (d) of the Media Council Act**, provides that the Commission *shall have all powers incidental to and necessary for the effective discharge of its functions under this Act and any other written law.*

(c) receive, investigate and deal with complaints made against journalists and media enterprise

(d) summon and receive information of evidence relating to any matter

18. The Respondents' assertion that their actions were in accordance with their regulatory function under Section 6 of the Media Council Act does not oust the Commission's authority under Section 32 of the Act to adjudicate Complaints concerning journalistic conduct and professional ethics. The Commission finds that it is properly seized of this matter and has the requisite jurisdiction to hear and determine the Complaint on its merits.

19. Notwithstanding the submissions of the Complainant and the 1st and 2nd Respondents, and considering the provisions of Section 22 of the Media Council Act 2013, which afford protection to the Media Council of Kenya (MCK), its officers, and agents from liability for regulatory actions undertaken in good faith and in compliance with applicable laws and regulations, the Commission finds as follows:

20. The Complaints Commission determines that the 2nd Respondent acted in good faith in their capacity as Chief Executive and Secretary of the Council (the

Regulator) and is therefore shielded from personal liability pursuant to Section 22 of the Media Council Act 2013.

ORDERS OF THE COMMISSION

21. The 2nd Respondent is hereby expunged from this matter, with all attendant claims dismissed without prejudice. The Commission, having considered the evidence, finds a prima facie case against the 1st Respondent for violations of the Media Council Act and/or Code of Conduct, necessitating a hearing on the merits, to be conducted via mediation or adjudication

22. The complaint is hereby admitted. It is so ordered.

DATED and DELIVERED at NAIROBI this.....4th ... FEBRUARY.....2025



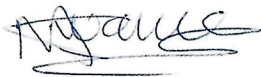
MR. DEMAS KIPRONO
CHAIRPERSON, MEDIA COMPLAINTS COMMISSION

I Certify this to be a true copy
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Sign.....Date.....
REGISTRAR
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7th Feb 2025



MS. POLLY GATHONI
VICE- CHAIR, MEDIA COMPLAINTS COMMISSION



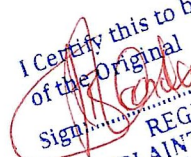
MR. KANTIM MWANIK
COMMISSIONER, MEDIA COMPLAINTS COMMISSION



MS. NASRA HUSSEIN OMAR
COMMISSIONER, MEDIA COMPLAINTS COMMISSION



MR. MASEME MACHUKA
COMMISSIONER, MEDIA COMPLAINTS COMMISSION

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Sign:  Date: 1 Feb 2025
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